

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 11, 2023 at 2:00 p.m.

1. <u>20-22792-E-13</u>	RICHARD TURNER	MOTION TO SELL
<u>WW-4</u>	Mark Wolff	6-13-23 <u>[35]</u>

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2023. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.
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The Bankruptcy Code permits Richard Scott Turner, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 5500 Forestwood Drive, Sacramento, California 95842 (“Property”).

The proposed purchaser of the Property is Pavlo Kudryk and Illia Kudryk, and the terms of the sale are:

- A. Purchase price - \$415,000.00
- B. Down Payment - \$18,000.00
- C. Close of escrow - 25 days after acceptance (May 16, 2023)
An addendum was added to the agreement on May 16, 2023, noting the possibility of delay due to court approval. The addendum provides for close of escrow by July 17, 2023.

Creditor's Nonopposition

Creditor CMG Mortgage, Inc. ("Creditor") filed a nonopposition to the Motion June 22, 2023. Dckt. 43. Creditor has no opposition, so long as the lien is paid off in full satisfaction of the debt.

Trustee's Nonopposition

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a nonopposition to the Motion June 27, 2023. Dckt. 45. Trustee asks the Court to grant the motion and state that \$27,500.00 lump sum from the proceeds of the sale will be paid to the Trustee. This lump sum payment is per the Nonstandard Provisions of the First Modified Plan. Dckt. 30.

DISCUSSION

Fees for Broker

The Motion references payment of "costs of sale such as . . . broker's commissions," but does not include particularities such as percentage or relevant law. The Motion does not identify who such broker is.

Looking at Exhibit A, it is a "Disclosure Regarding Real Estate Agency Relationship. Dckt. 38. This appears to identify Berkshire Hathaway HomeServices Elite Real Estate as the real estate Broker for the Buyers.

Included in Exhibit A is a Possible Representation of more than one Buyer or Seller form, in which Keller Williams Realty is identified as the Seller's Broker.

Using Exhibit C, Dckt. 38, the court calculated 5% to be divided equally between the two Brokers involved in the sale. However, neither a Motion to Employ or Motion for Compensation have been filed pursuant to 11 U.S.C. §§ 328(a), 330 for Seller's, the Debtor's Broker, so the monies relating to that commission cannot yet be disbursed. .

The court finds the broker fees reasonable and necessary. The court will order Trustee to hold 5% of the sale proceeds for payment of brokers. The amount will be released upon the granting of the Orders to Employ and Compensate. Parties are reminded these can be filed together.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the estate will recover an estimated \$2 benefitted by the proceeds of the sale.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Richard Scott Turner, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Richard Scott Turner, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Pavlo Kudryk and Illia Kudryk or nominee (“Buyer”), the Property commonly known as 5500 Forestwood Drive, Sacramento, California 95842 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$415,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibits A/B, Dckt. 38, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Next, the sales proceeds will be disbursed directly from escrow to the Chapter 13 Trustee in the following amounts: \$27,500 and an additional amount equal to 5% of the gross sales price which represents the real estate broker fees for which employment and authorization to pay will subsequently be filed by Debtor.
- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 13 Trustee, David P. Cusick, will hold five percent (5%) of the purchase price for the payment of broker’s commissions. Trustee will release funds to Keller Williams Realty, buyer’s broker, upon a subsequent order granting employment and compensation.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 1, 2023. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is XXXXXXX.

The Bankruptcy Code permits Jaw Andrew Smith, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 2576 Palmire Ave, South Lake Tahoe, California ("Property").

The proposed purchaser of the Property is Antonina Kisel, and the terms of the sale are:

- A. Purchase price - \$580,000.00
- B. Down payment - \$108,500.00
- C. Broker's Commission - 5.00%

Overbid Procedure

- A. Overbids should be in increments of \$10,000, with first initial overbid at \$590,000, and subsequent overbids increasing by \$10,000

- B. Overbidders must provide a deposit in the form of cash or cashier's check payable to the bankruptcy estate of \$108,500, which is the amount of the downpayment
- C. If the approved purchaser fails to close escrow by July 26, 2023, the next highest bidder, if any, shall be entitled to purchase the property at his or her bid amount.

Trustee's Opposition

Trustee filed an opposition on June 26, 2023. Dckt. 89. Trustee states they have not had the opportunity to receive and review the Estimated Closing Statement. Trustee does not oppose the sale, but needs to receive this document prior to the close of escrow.

On July 6, 2023, Debtor filed the Estimated Closing Statement as a Supplemental Exhibit. Dckt. 94. Debtor filed the Certificate of Service concurrently with the Exhibit, indicating Debtor served the Trustee. Dckt. 95.

At the hearing, **XXXXXXXXXX**

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because all liens and secured credit tied to the property will be paid with the approximate \$260,000.00 remainder benefitting the estate.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court for no specific reason in the Motion.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not granted.

Allowance of Fees for Broker

As permitted under the Local Bankruptcy Rules, the Motion also seeks the allowance of a five percent (5%) commission Jennifer Harrison of eXp Realty of California, Inc., who has served as Movant's Realtor and Broker ("Realtor"). The court authorized the employment of this real estate professional(s) by Order entered on May 26, 2023, Dckt. 74.

~~_____ A review of the application shows that Realtor's services for the Estate were beneficial and that the five percent (5%) of the gross sale price is proper for the services rendered and are so allowed as final fees pursuant to 11 U.S.C. § 330.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Sell Property filed by Jay Andrew Smith, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that Jay Andrew Smith, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Antonina Kisel or nominee ("Buyer"), the Property commonly known as 2576 Palmire Ave, South Lake Tahoe, California ("Property"); on the following terms:~~

~~_____ A. _____ The Property shall be sold to Buyer for \$580,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 83, and as further provided in this Order.~~

~~_____ B. _____ The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~

~~_____ C. _____ Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

~~_____ D. _____ Compensation for Jennifer Harrison of eXp Realty of California, who has served as Movant's Realtor and Broker is allowed pursuant in the amount of five percent (5%) of the actual purchase price, which may be disbursed directly from escrow~~

~~_____ **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.~~

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors on May 26, 2023. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is denied without prejudice.</p>

The debtor, Brandon Scott Harding and Katherine Ligaya Solilapsi Pierce (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$7,226.68 for sixty (60) months, and a 100% dividend to unsecured claims totaling \$12,138.00. Amended Plan, Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on June 26, 2023. Dckt. 49. Trustee opposes confirmation of the Plan on the basis that:

- A. The Amended Plan does not comply with the no-look fees as required by Local Bankruptcy Rule 2016-1(c).
- B. Debtor has not amended Schedule A/B to include their 2021 and 2022 tax refunds.

- C. Debtor's Amended Schedule I does not show that Debtor has adjusted their tax withholding, despite Schedule A/B showing that Debtor expects a future tax refund in 2023 in the amount of \$9,000.00.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Amended Plan indicates that Debtor's attorney was paid \$4,290.00, which is \$290.00 more than the amount permitted under Local Bankruptcy Rule 2016-1(c). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Amended Plan is confirmable.

Additionally, the Amended Plan does not satisfy the requirements of 11 U.S.C. § 1325(a)(1) because Debtor's Schedules A/B and I do not provide all of the information required by 11 U.S.C. § 1322(a)(1). It is unclear what Debtor's assets are considering that they have not updated Schedules A/B and I to reflect their 2021 and 2022 tax refunds and account for their anticipated 2023 tax refunds.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Brandon Scott Harding and Katherine Ligaya Solilapsi Pierce ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 24, 2023. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Objection to Claimed Exemptions is sustained without prejudice.</p>

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Brandon Scott Harding and Katherine Ligaya Solilapsi Pierce's ("Debtor") claimed exemptions under California law because:

1. "Debtors have claimed 1725 Chinook Road exempt under 703.140(b)(1) for \$29,275.00 and \$11,662.86 under 703.140(b)(5), for a total of \$40,937.86, which is \$7,287.86 (\$33,650.00 - \$40,937.86), more than allowed." Dckt. 26.

The court notes that Debtor filed a second Schedule C on May 26, 2023. Dckt. 31. The Debtor has not identified this (checked the box) that it is amending the prior Schedule C filed on March 15, 2023.

The Second Schedule C removes the real property as an exemption, which would resolve Trustee's objection with respect to the real property.

2. "Debtors have also exempted the following assets under C.C.P. §703.140(b)(5): Jewelry for \$800.00; cash on hand for \$200.00; Schools

Federal Credit Union checking account for \$150.00; First Command Bank checking account for \$2,156.00; Global Life for \$2,000.00; and, 2023 Tax Refunds for \$9,000.00, for an additional over-exempted amount of \$14,306.00.” Dckt. 26. Trustee believes these amounts are over-exempted under California Code of Civil Procedure § 703.140(b)(1), (5).

The court notes that Debtor’s Second Schedule C reflects a total claimed exemption for § 703.140(b)(1), (5) as follows:

Jewelry	\$2,500.00
Cash	\$200.00
Bank Account	\$150.00
Bank Account	\$2,156.00
Checking Account	\$392.00
Global Life	\$2,000.00
Tax Refund	\$9,000.00
	=====
Total § 703.140(b)(1), (5) Exemptions	\$16,398.00

This is less than the total exemption of \$33,650.00 for California Code of Civil Procedure § 703.140(b)(1), (b)(5) identified by the Chapter 13 Trustee.

Therefore, it appears that under the set of exemptions that Debtor seeks to assert under the Second Schedule C the Debtor is no longer “over-exempting” the amount as permitted under applicable law.

3. Additionally, Trustee objects to Debtor’s exemption under California Code of Civil Procedure § 703.140(b)(11)(D) for Globe Life.

The court notes that Debtor’s Amended Schedule C removes Debtor’s claimed exemption under § 703.140(b)(11)(D) for Globe Life and now includes it only in their (b)(1), (5) exemption. Therefore, Trustee’s objection appears resolved on these grounds as well.

The Objection to the Claim of Exemptions on Debtor’s Schedule C is sustained, without prejudice to Debtor filing what the court deems to be Amended Schedule C, Dckt. 26.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, without prejudice to Debtor filing what is deemed Amended Schedule C, Dckt. 31.

5.	<u>23-20801</u> -E-13 <u>DPC</u> -2	BRANDON HARDING AND KATHERINE PIERCE Richard Hall	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-24-23 <u>22</u>
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<p>Docket No. 22, Trustee’s Objection to Claimed Exemptions, appears to be a duplicate to Docket No. 24. The court will conduct its ruling on Docket No. 24.</p>

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. No Notice or Proof of Service has been filed.

Debtor filed a Motion to Modify the Confirmed Plan on May 18, 2023 which included a Notice of Hearing with no Proof of Service. Dckts. 83, 84. Debtor filed a second Motion to Modify the Confirmed Plan, Dckt. 87, which the court treats as an Amended Motion to Modify, in which Notice was filed (Dckt. 89), however, with no Proof of Service.

Pursuant to Local Bankruptcy Rule 9014-1(d) and (e), notice and a certificate of service must be filed with any matter for which a hearing is necessary. This included Amended Motions.

Additionally, Debtor has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that failure to file a written opposition may be treated as a waiver of a party's right to oppose, however, it does not properly advise that oppositions relating to motions on 28 days' notice must be filed and served at least 14 days preceding the date of hearing. Thus, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2).

Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion and for sanctions. Local Bankr. R. 1001-1(g), 9014-1(c)(l), 9014-1(l).

~~The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on ~~xxxx~~, 202~~x~~. By the court's calculation, ~~xx~~ days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).~~

~~----- The Motion to Modify the Confirmed Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).~~

The Motion to Modify the Confirmed Plan is denied.

The debtor, Lori Denise Fisher (“Debtor”) seeks to modify the Confirmed Plan because they received a salary increase and a second full-time job, therefore, they are now hoping to increase the Plan payment from \$850 to \$1,300 per month. Declaration, Dckt. 88. The Modified Plan provides \$850 per month until May 5, 2023, then, starting June 5, 2023, \$1,300 per month until April 5, 2025. Motion, Dckt. 87. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

PROCEDURAL DEFECTS

No Modified Plan Filed

Pursuant to Local Bankruptcy Rule 3015-1(a), all Chapter 13 debtors are required to use the standard Chapter 13 Plan form, Form EDC 3-080. Additionally, pursuant to Local Bankruptcy Rule 3015-1(d)(2), modified plans proposed after confirmation still require the plan proponent to file and serve a modified plan together with a motion to confirm the plan.

Only under Local Bankruptcy Rule 3015-1(d)(4), when there are minor modifications to the plan, and if there is a written stipulation of the debtor and trustee, shall modifications to the plan not need to meet all procedural requirements of the local rules.

Here, Debtor has not filed a proposed modified plan. This is a blatant procedural defect and the court cannot confirm the modifications without a new plan being filed.

Reused Docket Control Number

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused the Docket Control Number for Trustee’s current Motion to Dismiss. That is not correct. Debtor is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Pleadings filed as one Document

Debtor filed the Amended Declaration and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Debtor is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is

not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Schedules I/J Filed as Exhibits Only

Although Debtor has provided a supplemental Schedule I and J as an Exhibit (Dckt. 91), Debtor has failed to file each of these documents separately on to the Court's docket. Filing a schedule I and J as an exhibit is not sufficient for it to be considered a supplement. Debtor must file the supplemental schedules separately on the Court's docket and properly notice them to parties in interest. Federal Rule of Bankruptcy Procedure 1009(a).

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 5, 2023. Dckt. 90. Trustee shares in the court's concerns regarding the procedural defects. Additionally, Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent in Plan payments.

Based on the proposed modifications, Debtor does not cure the delinquency of \$9,722 under the confirmed Plan. Thus, Debtor would remain \$9,722.00 delinquent. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Lori Denise Fisher ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 23, 2023. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~granted, and the case is dismissed.~~

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Lori Denise Mickens ("Debtor"), is delinquent in Plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on March 22, 2023. Dckt. 69. Debtor states they have requested a withdrawal from their Profit Sharing Plan to bring the Plan current. Debtor does not know, however, if the delinquency will be cured prior to the hearing date. Debtor requests a short continuance.

TRUSTEE'S REPLY

Trustee filed a reply on March 27, 2023. Dckt. 70. Trustee is not opposed to a continuance, however, notes that the Debtor has not listed a Profit Sharing Plan on Schedule A/B, nor have they explained why they became delinquent and why they will refrain from being delinquent in the future.

At the hearing, Debtor appeared, advised the court over confusion that existed with respect to the Profit Sharing Plan, and that the Schedules will promptly be amended.

DISCUSSION

Delinquent

Debtor is \$6,322.00 delinquent in plan payments, which represents multiple months of the \$850.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Debtor reported that she has the funds and is ready to may payment to the Trustee. Debtor also explained the events that caused the default and why such was not likely to occur in the future.

The Trustee concurred in the request for a continuance to allow Debtor to continue in the cure and prosecution of the Chapter 13 Plan in this Bankruptcy Case.

Trustee's Status Report

Trustee filed a status report on May 2, 2023. Dckt. 76. Trustee states Debtor is still delinquent \$8,872.00.

Debtor filed a Response on May 5, 2023. Dckt. 78. Debtor explains that while she was able to get the withdrawal from the Pension and Profit Sharing Plan, the money was used to pay past due rent and as a partial payment for repairs on her 2012 Chevy Equinox. Debtor has also learned from an attorney that her Plan may be modified.

Debtor further states that she is now working two full-time jobs and has the funds to make the increased plan payments.

At the continued hearing, counsel for the Trustee reported that Debtor is currently delinquent more than \$8,000.

Debtor appeared and reported that she now believes the Plan can be modified (after having consulted with a bankruptcy attorney) and is prepared to continue in the prosecution of this case.

The court grants this one final continuance to allow the Debtor the opportunity to pick up this case and prosecute it, having now spent almost three years in these proceedings.

June 21, 2023

Preceding the May 10, 2023 hearing, Debtor filed an Amended Motion to Modify Plan. Dckt. 86. The hearing for the Debtor's Amended Motion to Modify is set for July 11, 2023. There are numerous procedural defects, however, with the Amended Motion to Modify:

1. Debtor has failed to file a new Plan.
2. Debtor has reused the current Motion to Dismiss's Docket Control Number.

3. No Proof of Service has been filed.
4. The Notice of Hearing does not advise respondents of how to present oppositions.

The court continues the hearing on the Motion to Dismiss to 2:00 p.m. on July 11, 2023, to be heard in conjunction with the Debtor's Motion to Modify Chapter 13 Plan. Failure of Debtor to cure the procedural defects and comply with the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure may result in not only denial a modified plan but also granting Trustee's Motion to Dismiss.

July 11, 2023 Hearing

Debtor has not resolved the procedural defects the court raised during their June 21, 2023 ruling. Additionally, the Trustee's opposition to their Motion to Confirm Modified Plan (Dckt. 90) notes Debtor remains delinquent under both the Confirmed Plan and Debtor's proposed Modified Plan.

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss ~~is granted, and the case is dismissed.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on June 5, 2023. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

A. The Chapter 13 documents are inaccurate.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Chapter 13 documents are inaccurate as Debtor admitted at the First Meeting of Creditors that they have not included all creditors on their Schedules. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9 thru 10

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 24, 2023. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Claimed Exemptions is sustained and the exemption is disallowed without prejudice.

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Nadia Zhiry's ("Debtor") claimed exemptions under California law because Debtor is claiming two homestead exemptions for the following real properties pursuant to California Code of Civil Procedure § 704.710: 1049 Claire Avenue, Sacramento and 1039 Claire Avenue, Sacramento. California Code of Civil Procedure § 704.710 allows a homestead exemption for the principal dwelling of the debtor, not two dwellings.

On May 26, 2023, the Debtor filed an Amended Schedule C, Dckt. 227, in which they now only claim the real property located at 1049 Claire Avenue as exempt. Schedule C being amended and appearing to rectify Trustee's objection.

The Objection is sustained and the exemption in the residence disallowed, without prejudice to the filing of the Amended Schedule C, Dckt. 227.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the exemption claimed in the real properties 1049 Claire Avenue, Sacramento and 1039 Claire Avenue, Sacramento is sustained, without prejudice to the Debtor filing the Amended Schedule C, Dckt. 227.

10. [22-21314](#)-E-13
[PGM-3](#)

NADIA ZHIRY
Peter Macaluso

**MOTION FOR DISBURSEMENT OF
FUNDS**
5-27-23 [[228](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2023. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Disbursement of Funds has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Disbursement of Funds is XXXXXXX.
--

Nadia Zhiry, the Chapter 13 Debtor, files this Motion seeking the disbursement of funds to Richard Sanders, the Contractor for the Chapter 13 Debtor. Debtor seeks a partial payment to the Contractor for a reimbursement for invoices that have been paid to sub-contractors.

Reused Docket Control Number

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number, PGM-3 being the Docket Control Number for an Objection to Claim filed by Debtor. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Review of Grounds Stated and Relief Requested in the Motion

This Motion concerns monies held in a blocked account pursuant to the prior order of the court Order; Dckt. 74. This monies are first earmarked for paying the costs and expenses in remediation of construction and land use Code violations. In related pleadings, the Debtor reports that the work has been completed and the violations files closed by the City of Sacramento.

The grounds stated with particularity in the Motion for the disbursement of monies to Richard Sanders, the General Contractor employed by the Debtor to do the construction and remediation work are summarized by the court (unless stated in “quotation marks”) as follows:

- A. Prior disbursements of \$28,948.63 has been made to the City of Sacramento for fees associated with the construction and remediation work.
- B. For the present disbursement, the Debtor requests authorization to disburse from the Blocked Account \$21,195.00 to Richard Sanders, the General Contractor, for the following work/materials/ subcontractors paid by the General Contractor:
 - 1. All Sacramento Plumbing, Inc.;
sewer and water service tap installation.....\$11,350.00
 - 2. Tailored Energy testing title 24 report.....\$ 145.00
 - 3. Flax and Stone fee for 10-39/1049
City Liaison Legalization.....\$ 2,000.00
 - 4. Chad Qi Engineering fees for 1049.....\$ 2,500.00
 - 5. Flax and Stone invoices.....\$ 3,200.00
 - 6. Chad Qi Engineering fees for 1039.....\$ 2,000.00
- C. The Debtor projects that there remains an additional \$31,700.00 for the following work and final General Contractor fees:

1. Framing under the house pillars, porch pillars
and framing, porch handrails, and decking.....\$8,500.00
2. Repair Cinderblocks.....\$2,800.00
3. Repair stucco and apply
acrylic color coat finish.....\$8,400.00
4. General Contractor fees upon completion.....\$12,000.00

Dckt. 228. The Motion continues, stating that the final completion date is projected to be July 5, 2023.

Richard Sanders, the General Contractor, provides his declaration in support of the Motion.
Dec.; Dckt. 230.

Opposition to Motion to Disburse Monies

The Chapter 13 Trustee has filed an Opposition stating that there are no receipts showing the expenses for the materials purchased or subcontractors paid. Dckt. 264. The Chapter 13 Trustee notes that prior requests for disbursements from the Blocked Account included such documentation.

The Chapter 13 Trustee also states that the Motion does not address which benchmarks have been addressed or the adequacy of the funds in the Blocked Account.

Gerard F. Keena II, the State Court Receiver, has filed a “Joinder in and Support For” the Chapter 13 Trustee’s Opposition. Dckt. 270. The Receiver states the need for the General Contractor to document such expenditures for materials and subcontractors.

Reply by Debtor

Debtor filed a Reply to the Opposition on July 3, 2023. Dckt. 275. In it, Debtor states that the actual amount requested for this disbursement is \$20,512.00, not the \$21,195.00 as stated in the Motion.

The Debtor then requests that in the Reply that the balance the General Contractor asserts due of \$28,445.90 be allowed as administrative expense to be paid through the Chapter 13 Plan. Reply, p. 3:1-4; Dckt. 275.

In the Reply, Debtor reports that the balance in the Blocked Account is \$20,512.00, which will be exhausted by the requested \$20,512.00 disbursement. Thus, the need to fund the balance of \$28,445.90 through the Chapter 13 Plan – rather than having the necessary money put up for all the work by Debtor and her family as was represented to the court. As the court discussed at the hearing on July 28, 2023 (Civ. Minutes; Dckt. 72) and in the Order establishing the Blocked Account:

The court presented the situation to Debtor and Debtor’s counsel in a very base way - “It’s Time to Put Up or Shut Up” in moving forward to reorganize in bankruptcy after the State Court Action having been around for four plus years and

the Receiver ready to proceed. The “Put Up” is not only setting a prompt deadline to have the work done, but the “money in the bank” to pay for getting it promptly done.

The Debtor and Receiver have filed their respective Status Reports for the continued hearing on July 28, 2022. While the Receiver remains skeptical as to Debtor and her family’s ability to prosecute the remediation, Debtor has now assembled \$30,000.00 of the projected \$46,000.00 in necessary funds to correct the violations. The cost is reported as being “only” \$46,000.00 because Richard Sanders, the General Contractor (“General Contractor”), is providing these services at a discounted rate. Additionally, Debtor’s counsel reports that the additional \$16,000.00 can be assembled and deposited in the next two weeks.

As discussed at the hearing, the costs of remediation will likely be higher as it appears that a subcontractor who is licensed to install fire suppression systems (which General Contractor is not) for the structure will need to be hired.

Counsel for the Debtor reported having \$5,000.00 in his trust account and five \$5,000.00 cashier’s checks issued by Wells Fargo Bank, N.A., with the checks made payable to the General Contractor. As the court noted at the hearing, the licensed professional General Contractor’s employment will need to be authorized by the court and his fees authorized to be paid pursuant to 11 U.S.C. §§ 330, 331.

Order, p. 2: 8-27; Dckt. 74.

Here, the present Motion appears to be one seeking Interim Allowance of Professional Fees, that of the General Contractor, as permitted in 11 U.S.C. § 331.

However, what Debtor now discloses is that \$28,445.90 of the construction and remediation costs, which Debtor and her family said they would fully fund so as not to create more debt for Debtor, has not been paid into the blocked account and that Debtor and her family do not intend to fully fund the construction and remediation expense.

Supplemental Exhibits
and Declaration

On July 3, 2023, the Debtor filed Supplemental Exhibits to document the material and subcontractor expenses for which payment is sought. Dckt. 277. This documentation consists of:

- A. Exhibit A - Checks of Bank of Marin Blocked Account
1. Check 2001; to Richard Sanders.....\$ 4,988.00
 2. Check 2001; to City of Sacramento.....\$10,585.04
 3. Check 2002; to City of Sacramento.....\$ 2,255.56
 4. Check 2005; to Richard Sanders.....\$16,102.23

B. Exhibit B - Richard Sanders Invoices

1. Invoice # 1598, dated June 2, 2023.....(\$70,048.13)
 - a. This lists Subcontractors, City fees, and Materials.
2. Invoice # 1596, dated June 2, 2023.....(\$12,000.00)
 - a. General Contractor Fees
3. Ventura's Plastering Invoice #4279.....(\$11,200.00)
4. City of Sacramento 1/26/2023 Fees.
 - a.(\$2,632.69)
 - b.(\$1,053.46)
5. Chad Qi Invoice 12/19/2022.....(\$2,500.00)
6. City of Sacramento 2/17/2023 Fees.....(\$1,792.00)
7. Flax & Stone Invoices
 - a.(\$1,700.00)
 - b.(\$1,500.00)
8. Chad Qi Agreement.....(\$2,000.00)+
9. All Sacramento Emergency Plumbing
Invoice April 4, 2023.....(\$11,350.00)
10. City of Sacramento Fees
 - a.(\$ 3,227.69)
 - b.(\$ 232.80)
11. Flax & Stone Invoice.....(\$2,000.00)
12. City of Sacramento Fees
 - a.(\$ 234.00)
 - b.(\$ 595.00)
13. Tailored Energy Testing Invoice 16028.....(\$ 145.00)
14. City of Sacramento Fees.....(\$ 1,053.48)
15. School District Fees.....(\$ 5,042.52)
16. Vega Framing Invoice 3465.....(\$ 8,500.00)

17. City of Sacramento Fees
 - a.(\$ 232.80)
 - b.(\$ 3,227.69)
18. City of Sacramento Water and Sewer.....(\$3,172.00)
19. Twin Rivers School District.....(\$2404.52)
20. Robla School District.....(\$2,813.80)
21. City of Sacramento Waste Plan.....(\$ 77.10)
22. Florin Perkins Disposal Site.....(\$ 193.39)
23. City of Sacramento Fees
 - a.(\$12,840.40)
 - b.(\$28,942.63)
 - c.(\$ 232.80)
24. City of Sacramento Fees
 - a.(\$ 3,227.69)

Dckt. 277.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Disbursement of Fees filed by Nadia Zhiry, the Chapter 13 Debtor, files this Motion seeking the disbursement of funds to Richard Sanders, the Contractor for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Disbursement of Fees is **XXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided but Failure to Comply with Local Rules Regarding Service. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2023. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

Movant's Original Certificate of Service, Dckt. 59, did not use the required Certificate of Service form. Movant rectified this error by serving a second, corrected, Certificate of Service, Dckt. 60, which uses the proper form.

<p>The Motion to Confirm the Modified Plan is denied.</p>
--

The debtor, Toni Y. Hamilton ("Debtor") seeks confirmation of the Modified Plan because the vehicles that were originally listed as Class 2 have broke down and are no longer worth repairing. Declaration, Dckt. 57. Additionally, Debtor states their financial situation is stabilizing. *Id.* From review of the Modified Plan, Debtor is now surrendering their 2013 Chrysler 200 and 2015 Ford Escape. Modified Plan, Dckt. 56. The Modified Plan provides monthly payments of \$100.00 for 36 months and a 0.6 percent dividend to unsecured claims, totaling \$137,000.00. Modified Plan, Dckt. 56. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 15, 2023. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$200.00 delinquent in plan payments under the terms of the proposed modified plan, which represents multiple months of the proposed modified \$100.00

plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Toni Y. Hamilton (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

12 thru 13

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 19, 2023. By the court's calculation, 53 days' notice was provided. 14 days' notice is required.

Though notice was provided, Objector has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

Additionally, Objector failed to serve parties requesting special notice, as required under Local Bankruptcy Rule 9014-1(d)(3)(iv). Failure to comply with provisions of the Local Rules may be grounds for sanctions. Local Bankruptcy Rule 9014-1(l).

At the hearing, **XXXXXXX**

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is overruled without prejudice.
--

U.S. Bank Trust National Association (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor seeks to modify the rights of Creditor whose security interest is secured solely by Debtor’s principal residence
- B. Debtor does not cure arrearage
- C. Debtor does not make monthly payments as required per agreed contract

OBJECTION’S PROCEDURAL DEFICIENCY

Pursuant to LBR 3015-1(c)(4), objections to confirmations of plans are brought on the original plan only. If a party in interest does not approve a modified plan, that argument shall be brought as an opposition to the motion to confirm the modified plan, not as a separate request for relief in the form of an objection.

This request for relief is procedurally deficient. As such, the request cannot be sustained. However, the court will take into account Creditor’s concerns when addressing the Motion to Confirm the Amended Plan.

FAILURE TO PROVIDE EVIDENCE

In addition to procedural deficiency, pursuant to LBR 9014-1(d)(3)(D), every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4). Here, Creditor failed to provide evidence in the form of a declaration or otherwise to support their objection.

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

Here, Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$264,163.33, secured by a first deed of trust against the property commonly known as 9 Charley Lynds Way, Forbestown, California. Debtor’s Schedules indicate that this is Debtor’s primary residence. Objector’s claim is secured by Debtor’s principal residence. Therefore, Debtor must maintain payments and cure the default within a reasonable time. 11 U.S.C. § 1322 (b)(2), (5). The Plan does not provide for maintaining payments. Rather, the Plan states Debtor will sell the Property in month 9 and “100% of net proceeds of the sale to creditors to be adjusted based on net.”

Failure to maintain payments is a violation of 11 U.S.C. § 1322(b)(5). However, given the procedural defects, although Creditor raises these concerns, the court must overrule Creditor’s objection.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by U.S. Bank Trust National Association (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled without prejudice, the court considering the grounds stated therein as an Opposition to the Debtor’s Motion to Confirm Amended Plan.

13. [21-21429-E-13](#)
[SLP-5](#)

JAMIE HOWELL
Stacie Power

MOTION TO CONFIRM PLAN
5-19-23 [\[266\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2023. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.
--

The debtor, Jamie Howell (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$3,650.00 per month for 2 months, \$1,250.00 per month for 4 months, \$210.00 per month for 54 months. Further, an estimated \$49,000.00 lump sum payment from the sale of the house in month 9 based on a \$345,000.00 recommended list price. This number will be adjusted to reflect 100% of net proceeds of the sale. The amended plan further notes that Tri Counties judgment lien is an avoidable preference which may be avoided pursuant to 11 U.S.C. 547. Amended Plan, Dckt. 268. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on June 20, 2023. Dckt. 294. Trustee opposes confirmation of the Plan on the basis that:

- A. Unsecured claims receive more in a liquidation. The potential lump sum from the sale of the house does not increase the payments to unsecured creditors.
- B. Priority claims of Desmond, Nolan, Livaich, & Cunningham (“DNLC”) and Nikki Farris are not included in the plan. The Plan is underfunded because priority claims are unaccounted for in the Plan.
- C. Plan relies on speculative future property sale. Debtor may not be able to sell the property as required by the Plan making the plan unfeasible.
- D. Secured creditor Tri Counties bank is not included in the plan.

CREDITOR’S OPPOSITION

Tri Counties Bank (“Creditor”) filed an Opposition on June 20, 2023. Dckt. 297. Creditor opposes confirmation of the Plan on the basis that:

- A. Secured creditor Tri Counties bank is not included in the plan. Tri Counties filed a Judgment Lien on January 4, 2021. This lien originated from a promissory note in the original sum of \$95,000.

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor’s plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that the plan calls for no less than 20% to unsecured claims. The amended plan’s nonstandard provision notes an estimated \$49,000 lump sum through sale of house, but it does not change the minimum percentage guaranteed to creditors. Based on the prior Chapter 7 Trustee’s findings, as evidenced in their Motion for Turnover, Dckt. 104, there may be substantial non-exempt assets that would allow unsecured claims to recover more than in this Plan.

Failure to Provide for a Priority Claim

Pursuant to the court's prior orders, Dckts. 249, 292, DNLC has a claim for \$20,736.42 and Nikki Farris has a claim for \$7,215.00. The fees for DNLC, as the attorney for the former Chapter 7 Trustee, and Nikki Farris, the former Chapter 7 Trustee, are administrative expenses entitled to priority treatment under 11 U.S.C. § 507(a)(1)(C) and (a)(2). Pursuant to 11 U.S.C. § 1322(a)(2), all priority debt must be paid through the Plan.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The majority of the funding for the plan comes for the sale of a house which is not currently listed for sale. Debtor has failed to take steps to sell the property. Therefore, the feasibility of the Plan is unclear. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide for a Secured Claim

Tri Counties Bank ("Creditor") asserts a secured claim in the amount of \$114,117.76. Proof of Claim 2-1. Debtor's Schedules indicate Creditor holds an unsecured claim, rather than a secured claim. Schedule E/F, Dckt. 1.

Under the additional provisions of the Amended Plan, Debtor is asserting Creditor's claim is an avoidable preference, subject to avoidance under 11 U.S.C. § 547. From review of Creditor's Proof of Claim, Creditor's claim is perfected by an abstract of judgment, recorded February 8, 2021. Proof of Claim 2-1. The bankruptcy case was filed April 19, 2021. Debtor has not taken steps to avoid the treatment of Creditor's claim.

If Debtor believes they can avoid Creditor's secured interest, Debtor should treat Tri Counties Bank's Claim as a Class 2 claim. While Debtor is seeking to avoid the action, Debtor should continue to provide adequate protection payments to the Trustee, who would hold the funds until the outcome of the avoidance action. Once the avoidance action is decided, any transfer avoided would be preserved for the benefit of the estate, unless there is a homestead exemption. 11 U.S.C. §§ 522(i)(2), 547, 551. If the claim is subject to a homestead exemption, upon Debtor's successful avoidance, the funds held by Trustee shall be preserved for the benefit of the debtor. *Id.*

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jamie Howell ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

14. [20-23431](#)-E-13

KAREN BLAKLEY

**CONTINUED MOTION TO MODIFY
PLAN**

[MJD](#)-5

Matthew DeCaminada

5-9-23 [73]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is XXXXXX

The debtor, Karen Blakley ("Debtor") seeks confirmation of the Modified Plan due to Trustee moving to dismiss Debtor's case after Debtor missed two Plan payments because of increased rent. Declaration, Dckt. 75. The Modified Plan provides \$8,154.00 to be paid through payments of \$302.00 per month, beginning May 25, 2023, for the remainder of the plan. Modified Plan, Dckt. 77. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 23, 2023. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan is overextended by possibly four months.
- B. Debtor's expenses are not reduced enough to comply with the Plan.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor will likely be in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in possibly 64 months. Debtor proposes monthly payments of \$8,154.00 per month, however, Trustee estimates \$8,512.30 per month is required due to Trustee's fees. Debtor's plan payment would need to increase to \$346.00 per month over the remaining 27 months to be feasible with 0% to unsecured creditors. *Id.* The Plan would exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor purports adjustments in the monthly budget has been made to accommodate Debtor's reduction in income and increased rent. Declaration, Dckt. 75 ¶ 10. Debtor states they have reduced food, personal goods, and transportation expenses. *Id.*

When comparing Debtor's Original Schedule J (Dckt. 1) with their Amended Schedule J (Dckt. 79), the following expenses have changed:

	Original Schedule J (Dckt. 1)	Amended Schedule J (Dckt. 79)
Rental or Home Ownership Expenses	\$1,040.00	\$1,330.00
Home Maintenance, Repair, and Upkeep	\$15.00	\$0.00
Clothing, Laundry, and Dry Cleaning	\$25.00	\$15.00
Transportation	\$125.00	\$150.00
SSI Deductions	\$0.00	\$164.90

From review of the Supplemental Schedule J, there is no reduction in food expenses (\$250.00) or personal care products (\$25.00) as Debtor states in their Declaration. Additionally, transportation expenses has not decreased as Debtor suggests, but has increased from \$125.00 to \$150.00.

At the hearing, counsel for the Debtor stated that the monthly plan payment will increase to \$346.00 a month, commencing in May 2023.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, the Trustee and counsel for Debtor requested a short continuance for the Debtor to confirm the correct income and expense information, and file the proposed amendments to provide for a higher plan payment.

July 11, 2023 Hearing

At the hearing xxxx

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Karen Patrice Blakley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is xxxxxxxx

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on June 14, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Debtor's Attorney advised Trustee that Debtor will be amending the Plan and Schedules.
- B. Debtor is delinquent.
- C. Trustee is requesting bank statements from October 25, 2022 through March 9, 2023. Trustee further requests inclusions of six months of statements from any and all other financial institutions from October 25, 2022 through April 25, 2023.

DISCUSSION

Trustee's objections are well-taken.

New Plan and Amended Schedules to be Filed

Debtor's attorney advised Trustee that Debtor will be amending the Plan and Schedules. As a Debtor does not intend to prosecute this plan, and Trustee does not have an accurate picture of Debtor's financial reality, the plan should be denied. *See* 11 U.S.C. § 1325(a)(6).

Delinquency

Debtor is \$397.00 delinquent in plan payments, which represents under one month of the \$5,200.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Trustee with Documents

Debtor has failed to timely provide Trustee with the following documents:

A. Six months of bank account statements.

FED. R. BANKR. P. 4002(b)(2). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 24, 2023. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is continued to July 25, 2023.</p>
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The debtor, Tammy Lynn Randolph ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$600.00 monthly payments for 24 months. Debtor further relies on the sale of two properties in complete the plan. Amended Plan, Dckt. 61. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 27, 2023. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

1. The Motion to Confirm is not plead with particularity. Trustee has previously raised this issue.
2. Trustee cannot assess the feasibility of the plan
3. Debtor's amended Schedule J has removed property taxes from monthly expenses

4. Debtor has yet to amend Schedule A/B to identify any electronics and jewelry

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not provided any grounds, merely “requests” to the court. The insufficient statements made by Movant are:

1. Debtor has filed a Third Amended Plan requested is hereby made to the Court take Judicial Notice of said Third Amended Plan.
2. This motion seeks an Order Confirming Third Amended Plan.
3. The Debtor will pay \$600 monthly to Trustee for 24 months, then will sell their real property, and may sell one or more parcels in Shasta County.

Two times before the court denied Debtor’s Motion to Confirm based on particularity grounds. During the November 22, 2022 hearing on the Motion to Confirm Debtor’s First Amended Plan, the court addressed the grave pleading failures of Debtor’s Motion. Civil Minutes, Dckt. 34.

Debtor then filed a Second Amended Plan, in which the Trustee again raised concerns as to the Debtor failing the particularity requirement. Upon review of the Motion to Confirm the First Amended Plan

and the Second, the two Motions appear nearly identical, with only one paragraph added in the Second, stating:

5. The debtor will pay \$600.00 /monthly to the Trustee for up to 24 months . [sic] Debtor will sell property at 155 West Oak Street Ave , Hayfork , CA by December 31,2023 and pay off Plan . [sic] Debtor is also attempting to sell one or more Shasta County Parcels.

Debtor agreed that the Motion should be denied. Civil Minutes, Dckt. 55.

Here, the Motion to Confirm the Third Amended Chapter 13 Plan is nearly identical to the Second, with minor changes to the fifth paragraph:

5. The debtor will pay \$600.00 /monthly to the Trustee for up to 24 months . [sic] Debtor will sell property at 155 West Oak Street Ave , Hayfork , CA by December 31,2023 and pay off Plan . [sic] Debtor is also attempting to sell one or more Shasta County Parcel [sic]. **Ap#093-120-032 , Creditor [sic] shall be paid 100% of their allowed claims.**

Trustee states the Third Amended Plan

“does not provide any specific information that would be of use to the parties, such as a description of the Plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtor to a file the Second Amended Plan. Instead, the Debtor is requiring all parties, including the Court, the task of painstakingly reading and reviewing documents filed previously and drawing their own conclusions.”

Opposition, Dckt. 64. The court agrees. In fact, Trustee already raised these concerns in their prior Objection to Debtor’s Second Amended Plan. Dckt. 49.

It is unclear why, after numerous denials of Debtor’s Motion to Confirm, as well as numerous oppositions from Trustee, that Debtor continues submitting essentially the same Motion. The court has warned Debtor that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

Debtor’s repeat submissions are a grave concern with the court, and undoubtably sanctionable behavior. At the hearing, **XXXXXXXXXXXX**

DISCUSSION

Plan Lacks Sufficient Clarity

Trustee argues inability to assess the feasibility of the plan due to multiple shortcomings in Debtor’s filings. Specifically Trustee mentions:

1. Failure to identify nonstandard provisions
2. Vague plan to sell property to the extent Trustee is unsure which property is being sold
3. Plan does not identify which collateral is connected to monthly dividends
4. Plan fails to identify which property is subject to Tax Lien. Schedule A/B include six Shasta County Properties
5. Trustee is unclear was the collateral is for “Trinity Co Grants Debt Ltd Hayford”
6. Attorney’s fees are unclear.

Without a clear understanding of Debtor’s financial reality, and intentions of the Plan, the Plan is not confirmable. 11 U.S.C. § (a)(6).

Unexplained Reduction in Expenses

Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor’s prior Schedule J lists \$300.00 for property taxes. Dckt. 25. Debtor filed Amended Schedules I and J on May 24, 2023, however, which indicate property tax of \$0.00. Dckt. 62.

Debtor’s declaration states their roommate is willing to pay the real estate taxes to Shasta and Trinity County totaling \$8,000. Dckt. 59. However, Debtor has failed to file a declaration of the roommate as evidence that they will give Debtor these funds. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Insufficient Information

Debtor has supplied insufficient information relating to assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor fails to report the electronics and jewelry in their possession. Without this information, Trustee cannot assess the feasibility of the Plan.

DEBTOR’S MOTION TO REQUEST MORE TIME

~~On June 29, 2023, Debtor filed a “Request for More Time.” Dckt. 67. Debtor states their Counsel believes the issues raised can be incorporated in an order confirming the Amended Plan, together with a further declaration. Debtor requests a continuance of the Motion to July 25, 2023 at 2:00 p.m.~~

~~—————The court grants the continuance to afford Debtor and their Counsel more time to address Trustee’s and the court’s concerns.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Tammy Randolph (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to July 25, 2023 at 2:00 p.m.

17. [20-24441-E-13](#)
[CK-2](#)

CARRIE CHARLTON
Catherine King

MOTION TO MODIFY PLAN
5-23-23 [\[36\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2023. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is denied.</p>
--

The debtor, Carrie Lynn Charlton (“Debtor”) seeks confirmation of the Modified Plan because Debtor has been struggling financially the last 6 months due to inflation and Debtor is receiving less contribution from their spouse with household expenses than anticipated. Declaration, Dckt. 39. The Modified Plan provides \$968.00 per month for 31 months followed by \$628.00 per month for 29 months, and a 24 percent dividend to unsecured claims totaling \$51,647.59. Modified Plan, Dckt. 40. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 27, 2023. Dckt. 49. Trustee opposes confirmation of the Plan on the basis that:

- A. **Liquidation Analysis** - Debtor recently amended their Schedules to reflect a higher real property and homestead exemption value. Trustee opposes the new homestead exemption, as the figures Debtor uses were not applicable at the time the case was filed. Additionally, Debtor's non-exempt assets based on the original figures fails the liquidation analysis.
- B. **Modification May Not be Required**- Debtor has paid ahead and may not be in need of the modification to reduce her plan payments
- C. **Unclear Payment Periods** - Debtor's Plan proposes a sixty month commitment period while Debtor's motion proposes a 59 month period. It is unclear what the commitment period is.
- D. **Improper Notice** - Plan itself is not listed on Certificate of Service.
- E. **Insufficient Declaration** - Debtor's Declaration includes use of legal rules Debtor may not have the knowledge of.
- F. **Best Efforts** - Modified Plan does not represent Debtor's best effort.

DEBTOR'S DECLARATION

Debtor filed a declaration on July 5, 2023. Dckt. 52. With respect to Trustee's concerns, Debtor states:

- 1. Liquidation Analysis - Debtor's original homestead should stand.
- 2. Paid Ahead - Debtor has paid ahead under the proposed Plan because Debtor is staying current on the Original Plan in case the Modified Plan is denied.

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that initial homestead exemption claimed was \$100,000.00. Debtor filed Amended Schedules A/B and C on May 23, 2023, which indicate the home increasing in value from \$310,000.00 to \$385,000.00 and the exemption increasing from \$100,000 to \$200,634.00.

Trustee opposes the new homestead exemption, as the figures Debtor uses were not applicable at the time the case was filed. Debtor concedes to Trustee's argument.

Debtor's non-exempt assets based on the original figures appear to cause Debtor's proposed Plan to fail the liquidation analysis. Based on the original exemptions, Debtor has \$24,131.00 in non-exempt equity. Debtor's plan proposes a 24% dividend to unsecured claims, which would be roughly \$12,395.42. Therefore, Debtor's Plan appears to fail the liquidation analysis.

Insufficient Notice

Federal Rule of Bankruptcy Procedure 2002(b)(2) requires twenty-eight days' notice "for filing objections and the hearing to consider confirmation of a . . . chapter 13 plan." FED. R. BANKR. P. 2002(b)(2). Trustee argues notice was sent with sufficient time, but failed to include the proposed Plan.

The Certificate of Service indicates Exhibits were served, including the proposed Plan as Exhibit A, but the Plan itself was not served and listed on the Certificate of Service. The court agrees, pursuant to Local Bankruptcy Rule 3015-1(d)(2), the Plan itself must be served, not just as an exhibit.

Declaration

Debtor's Declaration Debtor does not provide testimony as an "expert," but as a witness who has personal knowledge of the facts to which he testifies. Federal Rule of Evidence 602 is very clear that such a witness have personal knowledge of the matter of the testimony, stating:

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Debtor's testimony, stated under penalty of perjury in their declaration, contains many statements that would require Debtor to possess legal knowledge surrounding the intricacies of bankruptcy law. These statements include:

As required under 11 U.S.C. § 1325(a):

1. My Second Modified Chapter 13 Plan complies with the applicable provisions of Title 11 of the U.S. Code;
2. The voluntary petition and plan are proposed in good faith and by no means forbidden by law. . .
3. All secured creditors are provided for under the Plan pursuant to 11 U.S.C. § 1325(a)(5)(B). . . The retain their respective liens until the underlying debt is paid under nonbankruptcy law except to the extent any debt exceeds the value of the collateral which is not required to be paid in full under 11 U.S.C. § 1328.

Debtor is providing testimony in which they are stating their legal conclusions. Debtor's statements regarding their compliance with applicable bankruptcy law requires Debtor to draw on bankruptcy expertise. The testimony provided by Debtor is suspect and not credible, appearing to be drafted by Debtor's attorney.

Not Best Effort

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee makes three arguments demonstrating Debtor's lack of best effort:

- A. Debtor has paid ahead and does not demonstrate need to reduce payments.

Debtor continues making payments of \$968.00 per month. Debtor is proposing a modified Plan to lower payments to only \$628.00 per month, starting on the 32nd month. Debtor continuing to make the higher payments indicates a modified plan is not necessary.

- B. Debtor's modification decreases percentage to unsecured creditors.

The modified proposes to pay unsecured creditors 24.00%, where the confirmed plan pays no less than 24.65%. The Trustee calculates the proposed plan will pay 28.00%. Trustee requests this should be accurately disclosed in the modified plan. The court agrees.

- C. Debtor's modification increases voluntary retirement contributions.

Modified plan reduces payment from \$968.00 to \$628.00, while increasing voluntary retirement contributions from \$0.00 to \$250.00 per month. The Motion indicates this is actually a flex spending plan to pay for medical expenses, however, no information about the flex spending plan is included. Debtor does already budget \$50.00 per month for medical expenses. The court notes, however, Debtor does not list any mandatory contributions for retirement plans. Amended Schedule I, Dckt. 29. A voluntary contribution of \$250.00 is modest, and reasonable. However, if these contributions are for a flex spending plan, Debtor has not adequately explained the need for these contributions.

The Plan does not appear to be Debtor's best efforts under 11 U.S.C. § 1325(b) thus, may not be confirmed.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Carrie L. Charlton (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

18. [23-21341-E-13](#)
[BLG-1](#)

SAMUEL TURKS
Chad Johnson

**MOTION TO VALUE COLLATERAL OF
CARMAX BUSINESS SERVICES, LLC
6-8-23 [12]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 8, 2023. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Carmax Business Services, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$9,426.00.

The Motion filed by Samuel Turks (“Debtor”) to value the secured claim of Carmax Business Services (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 14. Debtor is the owner of a 2013 BMW 5 Series (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$9,425.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See*

FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

Trustee filed an opposition on June 14, 2023. Dckt 18. Trustee opposes the Motion due to a lack of clarity on the value of the collateral. Trustee notes Debtor has indicated the value to be \$6,000.00 and \$9,425.00 in the Motion. Trustee notes the \$9,425.00 value used in the schedules and assumed the \$6,000.00 to be a typo.

DEBTOR'S RESPONSE

Debtor filed a response to the opposition on June 28, 2023. Dckt. 21. Debtor confirms the \$6,000.00 value was a typo and affirms the \$9,425.00 value of the collateral in Declaration, Dckt. 22.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 28, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,682.53. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,425.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Samuel Turks ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of CarMax Business Services, LLC ("Creditor") secured by an asset described as 2013 BMW 5 Series ("Vehicle") is determined to be a secured claim in the amount of \$9,425.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,425.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 14, 2023. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

The Motion to Impose the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Impose the Automatic Stay is denied.</p>
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Debtor filed a Motion to Impose the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4)(B). The court notes, pursuant to 11 U.S.C. § 362(c)(4), the automatic stay does not go into effect if 2 or more single or joint cases were pending within the previous year but were dismissed. In the Motion Debtor identifies the following prior cases:

1. Chapter 13 Case 23-20713
 - a. Dismissed.....June 2, 2023.
2. Chapter 13 Case 19-24939
 - a. Dismissed.....June 19, 2019
3. Spouses's Chapter 13 Case 19-24939
 - a. Dismissed.....June 19, 2019
4. Spouse's Chapter 13 Case 21-20525
 - a. Dismissed.....May 27, 2021

5. Spouse's Chapter 13 Case 21-23775

a. Dismissed.....July 15, 2021

Debtor's current Bankruptcy Case was filed on June 14, 2023. He has had pending and dismissed one prior bankruptcy case in the one year period prior to June 14, 2023 – that being Case 23-20713.

Debtor reports having a second case within one year of June 14, 2023, that being his Chapter 7 Case, 22-20524, which was filed on March 7, 2023, Debtor was granted his discharge, and the Chapter 7 Case closed on July 15, 2022.

In the body of the Motion Debtor then makes argument that 11 U.S.C. § 362(c)(3)(A) provides that the automatic stay terminates thirty days if there was a prior bankruptcy case that was pending and dismissed within one year of the filing of the subsequent case. It appears that the title to Debtor's Motion contains a typographical error and misstates that relief is sought pursuant to 11 U.S.C. § 362(c)(4)(B).

Pursuant to 11 U.S.C. § 362(c)(3)(B), if a Debtor had one pending case dismissed in the prior year, then the automatic stay terminates as to the debtor on the 30th day after filing the later case. Debtor had one case dismissed in the prior year, thus the termination of the stay at issue is as to the debtor, not in its entirety.

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor"), creditor holding a secured claim in the real property commonly known as 707 Daniels Avenue, Vallejo, California ("Property") filed an opposition to the Motion on June 28, 2023. Dckt. 25. No evidence is filed in support of the Opposition.

In the Opposition, Creditor alleges a factual background to their relationship to Debtor and Debtor's prior bankruptcy filings, but provides no evidence in support thereof. Relevant events as follows:

- A. November 18, 2016 - Creditor records a Notice of Default.
- B. March 3, 2017 - Default was not cured and Creditor caused a Notice of Trustee's Sale to be recorded. Sale was postponed due to multiple bankruptcy filings.
- C. May 16, 2017 - Debtor files Case No. 17-23313, and case was dismissed in August 2017 for failure to prosecute.
- D. June 13, 2017 - Creditor notified Debtor transferred ownership to a Trust, and notified that the Trustee of the Trust had filed for bankruptcy four (4) months before. Creditor states the Trustee filed to stay the Trustee's Sale. Trustee's bankruptcy case was dismissed in September of 2017.
- E. Trustee's Sale date was postponed to September 28, 2017.

- F. September 9, 2017 - Diana Evans, co-borrower, files Chapter 13. Case No. 17-26013. Case converted February 9, 2018. Debtor moved to dismiss and dismissal was granted with one-year bar on refiling due to bad faith.
- G. April 7, 2018 - Debtor files for Chapter 13. Case No. 18-22102. May 7, 2018, Debtor moves to dismiss which was opposed by Trustee and subsequently denied. Case dismissed October 11, 2018.
- H. November 19, 2018 - Notice of Trustee Sale recorded.
- I. December 12, 2018 - Debtor files under Chapter 13. Case No. 18-27708. Case dismissed with a two-year bar on refiling ordered May 8, 2019.
- J. August 6, 2019 - Diana Evans, co-borrower, files under Chapter 13. 19-24939. Case dismissed January 16, 2020.
- K. March 9, 2020 - Notice of Trustee Sale recorded.
- L. June 12, 2020 - Diana Evans files under Chapter 13. Case No. 20-22996. Case dismissed July 13, 2020.
- M. February 16, 2021 - Diana Evans files Chapter 13. Case No. 21-20525. Case dismissed March 1, 2021.
- N. August 17, 2021 - Notice of Trustee Sale recorded.
- O. November 1, 2021 - Diana Evans files Chapter 13. Case No. 21-23775. Case dismissed February 11, 2022.
- P. March 7, 2022 - Joint Chapter filing by Diana and Virgil Evans. Case No. 22-20524. Debtors received a discharge on July 11, 2022.
- Q. January 31, 2023 - Notice of Trustee Sale recorded.
- R. March 7, 2023 - Joint Chapter 13 filing. Case dismissed due Judge Clement's pre-filing review, due to a 2-year bar on refiling and then an additional "prefiling review" requirement imposed by the Case No. 19-21592 Order Dismissing the case. Upon review of the Order, Case No. 19-21592, Dckt. 48, on May 8, 2019, Judge Jaime imposed a 2-year bar to any single or joint bankruptcy filing by Debtor Virgil, followed by a 2-year pre-filing review of any subsequent filed case by the chief bankruptcy judge. That 2-year pre-filing review ended on May 8, 2023.
- S. June 14, 2023 - Foreclosure sale completed by Creditor. Creditor ran search through PACER and found no pending bankruptcy cases at time of sale.
- T. June 14, 2023, at 3:44 PM - Debtor files this case.

In Bankruptcy Case 19-21592, the Hon. Christopher D. Jaime issued an Order which not only dismissed the Chapter 13 case filed by Debtor with prejudice, but imposed a two year bar on filing another bankruptcy case and then after that a two year period in which there is a requirement for pre-filing review by the Chief Bankruptcy Judge before another case may be filed by Debtor. This order states:

IT IS FURTHER ORDERED that the dismissal with prejudice is a 2-year bar to the filing any single or joint bankruptcy case, and the 2-year bar will run from the entry of the order granting the motion.

IT IS FURTHER ORDERED that after that 2-year bar expires, there shall be a 2-year pre-filing review of any subsequently filed case by the chief bankruptcy judge.

19-21592; Order, Dckt. 48.

The initial two year bar ran from the May 8, 2019 entry of the forgoing order, and expired on May 7, 2021. The two year prefiling review requirement runs from May 8, 2021 through May 9, 2023. The current Bankruptcy Case was filed on June 14, 2023, which is after the pre-filing review requirement expired.

Creditor states that there have been actually thirteen bankruptcy filed over the past seven years that have worked to stop Creditor from completing a nonjudicial foreclosure sale on its collateral.

Creditor also alleges that it is taking steps to rescind the nonjudicial foreclosure sale that was conducted on June 14, 2023, even though it was not provided notice of this most recent bankruptcy filing until after the sale was conducted.

Creditor notes that Debtor's implication he is under review for loss mitigation is not a correct representation to the court. Debtor's loss mitigation was denied on June 5, 2023. Further, Debtor disclosed only 7 of the 13 prior bankruptcies used to stop Creditor from enforcing their lien.

Creditor also notes that Debtor's filing from three months ago states an income of \$325.00 per month from employment and \$2,152.00 in Social Security. Case No. 23-20713, Schedule I, Dckt. 1. Neither of those income sources are listed on current Schedules. Further discrepancies exist between the Schedules of the pending case and prior case from three months ago.

DISCUSSION

Virgil Leroy Evans ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's third bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 22-20524) was discharged on July 11, 2022. Debtor's other prior bankruptcy case (No. 23-20713) was dismissed on March 10, 2023, after the Chief Bankruptcy Judge's "pre-filing" review, as required by the May 8, 2019 order dismissing Debtor's prior case. *See* Order, Dckt. 48, Case No. 19-21592.

As Debtor had one prior case dismissed in the prior year, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith because he is currently in financial hardship. Declaration, Dckt. 16. Additionally, Debtor indicates they need more time to obtain a loan modification. *Id.* Debtor states they obtained new employment, which will help them fund a reorganize their debts, keep their home, and pay their creditors. *Id.* Debtor does not discuss why their prior cases were dismissed. *Id.*

July 10, 2023 Debtor states that he has increased his income by \$500 to \$1,000 per week by driving for Door Dash. *Id.*, ¶ 3. Looking at Amended Schedules I and J, Debtor lists \$2,000.00 a month net income from driving for Door Dash, and no other income for himself other than \$125.00 as a church musician. Amd. Sch I; Dckt. 12 at 18-19. The \$2,000.00 a month is listed as net income from Debtor's business, but he fails to attached the required statement of income and expenses showing how that net income is computed.

Looking on Amended Schedule J, Debtor makes no provision for paying any income taxes on the \$2,000.00 a month net income. Also, Debtor makes no provision for payment of self-employment taxes, Social Security taxes, or other tax obligations of the self-employed. *Id.*, p. 20-21.

The court also notes Debtor states under penalty of perjury that there are no property taxes to be paid, no homeowner's insurance to be paid, and that the month cost for maintenance and upkeep of a residential property is only (\$1.31). *Id.*, p. 20.

In Schedule I Debtor lists his non-debtor Spouse as having \$1,032 a month in gross income working as an employee of a retail business. *Id.* at 18. It states that she has been employed for thirteen months at that job. *Id.* For tax, Medicare, and Social Security withholding, it is stated that the three total (\$88.23) a month. *Id.* at 19. The non-debtor Spouse also lists having \$1,984.10 in monthly Social Security income. It is not clear whether this is a gross number or after withholding of federal taxes.

While stating under penalty of perjury that the non-debtor Spouse has been employed for thirteen months, on the Statement of Financial Affairs Debtor states under penalty of perjury that the non-debtor Spouse had no gross income for wages in 2023 (5 months) or in 2022 (12 more months) prior to the filing of this case. *Id.*; Stmt. Fin. Affrs., Question 4, p. 23-24.

These statements under penalty of perjury conflict. Additionally, in looking at the expenses on Schedule J, they do not appear to be a good faith statement of reasonable and necessary expenses.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

1. Previous Plan

Debtor indicates their prior plan was filed for the purpose of saving their home. Declaration, Dckt. 16. From review of the prior bankruptcy cases filed by Debtor, as well as the Opposition filed by Creditor, Debtor has filed **seven other** bankruptcies, jointly and individually, in an attempt to stop the enforcement of the lien against this property. Additionally, Debtor's Spouse has filed **five other** bankruptcies individually, and a separate beneficiary filed **one other** case in an attempt to stop foreclose. Debtor does not have a history of prosecuting these bankruptcies and has even relied on others to file bankruptcies and schedule the Property to stop enforcement of the lien.

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.). It is clear to the court that Debtor's, and third-parties', over seven year charade of serial filings has been a scheme to prevent Creditor from enforcing their rights as a lienholder.

The court does not find that this factor weighs in favor of good faith.

2. Changed Circumstances for the Present Plan to Succeed

Debtor's declaration indicates their financial circumstances have changed since their previous case was dismissed. Additionally, Debtor states they have hired an attorney and they are confident their attorney will be able to represent them.

As for Debtor's financial circumstances, they state they now have \$500-\$1,000 per week from their new job at DoorDash, and Debtor's spouse's job is "solid and steady." Upon the court's review of Debtor's Income and Expenses, Debtor's Schedule I does not indicate any income from a new job. Dckt. 12. Rather, Debtor's only income is "Net income from rental property and from operating a business, profession, or farm" in the amount of \$2,000 and \$125.00 from Debtor's job as a church musician. Debtor's total monthly income is \$2,125.00. It could be that the \$2,000 listed as Debtor's income from a rental property and/or operating a business is the income from their DoorDash job. However, it is unclear to the court.

Additionally, Debtor's spouse has monthly take home pay from their job in the amount of \$943.88 and \$1,984.10 in Social Security. Debtor's spouse's monthly income is \$2,927.98.

Debtor's expenses appear grossly underestimated. Debtor states the home maintenance, repair, and upkeep expenses are \$1.31. Additionally, Debtor claims \$0.00 in real estate taxes and home insurance, \$0.00 in entertainment, \$0.00 in vehicle insurance, and \$5.98 in medical and dental expenses. After deducting their expenses, Debtor and Debtor's spouse's net income is \$3,950.00. Debtor's monthly plan payment proposes \$3,850.00. With Debtor's low expenses, it does not appear feasible that Debtor will be able to make the Plan payments.

Debtor has not sufficiently demonstrated the case was filed in good faith, or rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Virgil Leroy Evans ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2023. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

CitiMortgage, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor may be unable to afford the payment plan.
- B. The plan is not feasible.

DISCUSSION

Creditor's objections are well-taken. .

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's proposed monthly plan payment is \$1,929.51, but Debtor's Schedules I and J

indicate a monthly income of \$1,597.14. It is unclear how Debtor will be able to afford the proposed plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's monthly income of \$1,597.14 is insufficient to pay even the \$1,636.55 monthly contract installment on the Class 1 claim. As stated above, the monthly income is insufficient to even make the ongoing monthly mortgage payment to Creditor. Thus, the Plan may not be confirmed.

Creditor also notes Debtor intends to cure the outstanding arrears by sale (Schedule A/B, Dckt. 20), but there is no certainty that the Property will be sold in the foreseeable future.

In a proposed cure-by-sale under 11 U.S.C. § 1325, the Debtor should produce evidence as to marketing efforts, the state of the market for the asset, current sale prospects, and their circumstances that show how the Plan is feasible during the commitment period. *In re Lindsey*, 183 B.R. 624, 627 (Bankr. D. Idaho 1995); *In re Barberena*, Nos. 08-14946-B-13, HDN-3, 2009 Bankr. LEXIS 222, at *7 (Bankr. E.D. Cal. Jan. 28, 2009).

Here, Debtor's Plan proposes post-petition monthly payments to the Creditor of \$1,636.55, with no arrearage payments. Rather, Debtor states the arrearage is "to be cured upon sale of the residence." Debtor has not provided any evidence or details as to the sale of the residence to indicate the Plan's feasibility. Debtor provides no additional provisions that address the sale of the Property, the time line for the sale, and so forth. Due to uncertainty, the Plan fails to meet the requirements of 11 U.S.C. § 1325(a)(6) and may not be confirmed.

DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL

On July 6, 2023, Debtor filed a voluntary request for dismissal. Dckt. 35. It is clear to the court Debtor does not wish to prosecute the Plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by CitiMortgage, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2023. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

The debtor, Ruthie Shoulders (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$1,350.00 for months one (1) and two (2) followed by monthly plan payments of \$1,545.00 for months three (3) through sixty (60) to the Trustee, and monthly payments of \$708.42 and \$407.28 to Rushmore Loan Management Services, LLC with a 0% interest rate in secured claims totaling \$19,549.63. Amended Plan, Dckt. 32. The Amended plan also provides for monthly payments of \$184.06 to the Franchise Tax Board with a 0% interest rate in secured claims totaling \$11,043.61. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on June 20, 2023. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to provide copies of her Federal Income Tax Returns for 2007 to 2022.
- B. Debtor failed to show tax expenses on Schedule I or J.

C. Debtor is delinquent on plan payments.

DISCUSSION

Failure to Provide Tax Returns

The Chapter 13 Trustee argues that Debtor did not provide federal income tax returns for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide federal income tax returns from 2007 to 2022. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Show Tax Expenses

The Chapter 13 Trustee notes Debtor does not provide a tax expense on Schedule I or J. Dckt. 31. Debtor's Schedule I indicates Debtor regularly receives \$2,922.93 in pension or retirement income and \$628.00 in Social Security. Trustee received statements showing Debtor received a monthly PERS payment of \$2,922.93 on March 1, 2023, which is treated as ordinary income. Debtor shows no tax expenses on Schedule I or J, while PERS is treated as ordinary income. Failing to list the tax expenses indicates a lack of feasibility.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,350.00 delinquent in plan payments, which represents one month of the \$1,350.00 plan payment for months one (1) and two (2). Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ruthie Shoulders ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, Creditor's Attorney, and Office of the United States Trustee on June 1, 2023. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Motion for Consent to Enter Into Loan Modification Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Consent to Enter Into Loan Modification Agreement is XXXXXX.

The Motion to Approve Loan Modification filed by Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz ("Debtor") seeks court approval for Debtor to incur post-petition credit through a Loan Modification with Rocket Mortgage, LLC f/k/a/ Quicken Loans, LLC ("Creditor"). The basic terms of the Loan Modification (Agreement, Exhibit A; Dckt. 67), are:

1. Modification Period.....30 Years
2. Interest Rate.....5.250%
3. Principal Monthly Payment.....\$2,227.76

The previous payment was \$2,340.00. Proof of Claim 6-1 p. 4.

4. Estimated Monthly Escrow Payment.....\$864.46

The previous monthly escrow payment was \$536.10. Proof of Claim 6-1 p. 4. It is not clear why the escrow payment is increased by over \$300.00. At the hearing, ~~XXXXXXXXXX~~

5. Total Monthly Payment.....\$3,092.62

The previous total monthly payment was \$3,140.84, which included a “private mortgage insurance payment” of \$264.74.

6. Payment Start Date.....02/01/2023

7. Number of Monthly Payments.....360 Payments

However, no declaration of Debtor is provided explaining the modification or that Debtor understands what Debtor is committing to. The court raised the same concern in the court’s order approving the trial loan modification. Civil Minutes, Dckt. 62.

The Local Rules of Bankruptcy require that evidence be filed along with every motion and request for relief. Local Bankr. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. Local Bankr. R. 1001-1(g). However, an employee of Rocket Mortgage, LaTasha Calvert, provides her Declaration, whose testimony includes:

- a. She testifies that Rocket Mortgage is a “Creditor of the Debtors with respect to a certain mortgage upon real estate, with a common address of 1524 Bailey Dr, Fairfield, California 94522, with a total outstanding balance of \$403,430.87.” Dec., ¶ 8; Dckt. 66.
- b. The Debtor is obligated on a Note dated October 15, 2018, with an outstanding balance of (\$403,430.87). She further testifies that the original note amount was (\$406,491.00). *Id.*, ¶ 8, 9.
- c. The terms of the Loan Modification include three hundred and sixty (360) payments, effective on January 1, 2023, with an interest rate of 5.250% and the first payment of (\$3,902.62) (includes principal, interest and escrow) will be due on February 1, 2023. *Id.*, ¶ 12.

Rocket Mortgage has filed Proof of Claim 6-2, stating that the secured claim is (\$394,017.49) and fails to provide the required information about what the creditor states is the value of the collateral. POC 6-2, ¶ 9. The principal balance is stated to be (\$394,017.49) on the attachment to Proof of Claim 6-2, with the monthly payment being (\$3,152.12). POC 6-2, p. 4. Additionally, the Proof of Claim indicates there are no defaults as of the date of the petition. *Id.* ¶ 9.

TRUSTEE’S RESPONSE

On June 26, 2023, the Chapter 13 Trustee, David Cusick, (“Trustee”), filed a Response noting the Motion is identical to the previous Motion filed on January 18, 2022 (Dckt. 56), which the Court granted on December 13, 2022 (Dckt. 62). The Trustee has no opposition to the Debtor entering into the trial loan modification agreement and requests the motion be granted.

From the court's review of the two Motions, the first Motion had a trial end date of December 2022, during "Phase One" of the trial period. Exhibit A, Dckt. 59. The current Motion is for the modification agreement, after the trial period was successful. Exhibit A, Dckt. 67.

DISCUSSION

It is unclear why Debtor is obtaining this post-petition financing. Debtor has not provided a Declaration, and the Motion does not clarify, why Debtor needs to modify their loan. It does not appear Debtor was in default, and the new payments are only \$50 cheaper. However, they no longer include a "private mortgage insurance."

At the hearing, **XXXXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to For Consent to Enter into a Loan Modification Agreement filed by Rocket Mortgage, ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Enter into the Loan Modification is **XXXXXXXXXXXX**

23 thru 25

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 8, 2023. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan does not cure Creditor's pre-petition arrears.

Failure to Provide Evidence

Creditor's Counsel filed this Motion making several factual assertions. However, no declaration of the Creditor was filed to support those assertions.

The Objection does reference Proof of Claim No. 17-1 which was filed by Creditor. In the Proof of Claim Creditor states that the arrearage to be cured as of the filing of the case was (\$4,037,31). POC 17-1, ¶ 9. A copy of the Proof of Claim is provided as Exhibit A. Dckt. 23.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$4,037.31 in pre-petition arrearages. Proof of Claim 17-1. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 19, 2023. By the court’s calculation, 53 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

Toyota Motor Credit Corporation (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s proposed interest rate of 8.0 percent is inappropriate.
- B. Debtor cannot lien strip the loan within 910 days prior to filing for bankruptcy.

Failure to Provide Evidence

Creditor’s Counsel filed this Motion making several factual assertions. However, no declaration of the Creditor was filed to support those assertions.

The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect

that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. Local Bankr. R. 9014-1(d)(3)(D). Every request for relief needs evidence, and if Creditor's Counsel provides exhibits, then Creditor's Counsel must authenticate such evidence. Local Bankr. R. 9014-1. Failure to comply with the Local Rules is grounds for an appropriate sanction. Local Bankr. R. 1001-1(g).

DISCUSSION

Creditor's legal objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 8.50%. Creditor's claim is secured by a 2019 INFINITY Q50 (VIN #0823). Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case. While Creditor states that the prime rate was 8.00%, Creditor does not provide the court with any evidence of such prime rate.

This portion of the Objection is overruled without prejudice.

Purchase Money Security Interest

Creditor objects to the confirmation of the Plan on the basis that Debtor is prohibited from lienstripping Creditor's claim. If a creditor has a purchase-money lien on a motor vehicle that was acquired for personal use, the debt cannot have been incurred within the preceding 910 days of the date when Debtor filed for Chapter 13 bankruptcy. 11 U.S.C. § 1325(a) (hanging paragraph). Debtor acquired the Property for personal use and obtained financing from Creditor on February 14, 2021. Proof of Claim 13-1. Debtor filed the petition on April 19, 2023 (Dckt. 1). Because less than 910 days have passed prior to filing the petition, Debtors cannot value Creditor's claim under a 11 U.S.C. § 506 valuation.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Toyota Motor Credit Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

25. [23-21265-E-13](#)
[KMM-2](#)

RONALD/SABRINA
ABERCROMBIE
Mo Mokkaaram

**OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION**
5-19-23 [17]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 19, 2023. By the court’s calculation, 53 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
--

Toyota Motor Credit Corporation (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s value of the property to be distributed to Creditor fails to provide for Creditor’s claim.

B. Debtor's proposed interest rate of 8.50 percent is inappropriate.

Failure to Provide Evidence

Creditor's Counsel filed this Motion making several factual assertions. However, no declaration of the Creditor was filed to support those assertions.

The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. Local Bankr. R. 9014-1(d)(3)(D). Every request for relief needs evidence, and if Creditor's Counsel provides exhibits, then Creditor's Counsel must authenticate such evidence. Local Bankr. R. 9014-1. Failure to comply with the Local Rules is grounds for an appropriate sanction. Local Bankr. R. 1001-1(g).

DISCUSSION

Creditor's objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 8.50%. Creditor's claim is secured by a 2019 INFINITY Q50 (VIN #0823). Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. While Creditor states that the prime rate was 8.00%, Creditor does not provide the court with any evidence of such prime rate.

This portion of the Objection is overruled without prejudice.

The court having denied confirmation pursuant to another Objection to Confirmation, overruling this Motion does not result in the confirmation of the Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Toyota Motor Credit Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled without prejudice. The court having sustained a separate Objection to Confirmation, the proposed Chapter 13 Plan is not confirmed.

26. [23-20566-E-13](#)
[DPC-1](#)

JACKY LIN
Richard Jare

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DAVID P. CUSICK
4-20-23 [15]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on April 20, 2023. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXX.
--

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

A. Debtor’s Plan fails the liquidation analysis.

DISCUSSION

Trustee’s objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor has a ½ interest in real property located at 1863 Mammoth Way (“Property”). The Property is not scheduled as Debtor’s primary residence.

Debtor claims on their Amended Schedule C, Dckt. 14, that they only have a remainder ½ interest in the Property with their sister from a resulting trust in favor of their mother. However, Trustee reviewed the Deed which indicates that the Property was transferred to a Desiree Lin and Debtor as joint tenants. The Deed does not indicate anything other than a ½ interest in the entirety of the Property.

Debtor is only claiming an exemption in the amount of \$10,000.00 in this Property. Trustee values the Property at approximately \$400,000.00. The Plan proposes to pay unsecured creditors in the amount of \$26,728.24, however, scheduled unsecured claims total \$83,525.76. In a liquidation, unsecured claims would receive payment in full from the Property.

At the hearing, counsel for the Debtor reported that there are trust interests in the property that are not of record. He said possibly there could be an argument that there is a resulting trust. The court addressed with counsel the provisions of 11 U.S.C. § 544(b).

July 11, 2023 Hearing

Nothing further was filed by the Parties prior to the continued hearing. At the July 10, 2023 hearing, **XXXXXXX** x.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is **XXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 14, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The First Meeting of Creditors was not conducted.
- B. Debtor is delinquent on plan payments.
- C. Debtor failed to provide Trustee with payment advices.
- D. Debtor failed to provide Trustee with Federal Tax Income Returns.
- E. Debtor is a serial filer.
- F. The plan is overextended.

G. The Chapter 13 Schedules are inaccurate.

F. The plan fails the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Failure to Conduct § 341 Meeting

Debtor appeared at the Meeting of Creditors held pursuant to 11 U.S.C. § 341, however, Debtor indicated they will be dismissing the case. Therefore, the meeting was not conducted. Attempting to confirm a plan while failing to be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Delinquency

Debtor is \$2,246.00 delinquent in plan payments, which represents one month of the \$2,246.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 98 months due to the Plan being under-funded. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Inaccurate Schedules

Debtors Schedule C is exempting real property under 704.30(a)(1) in the amount of \$230,922.89. If Debtor actually means California Code of Civil Procedure § 704.030, Debtor is limited to \$3,500.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

Debtor Fails Liquidation Analysis

Debtor's plan fails the Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The value of the property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of this title. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets listed on Schedule A/B total \$3,877.00, which includes cash for \$27.00 and money deposits totaling \$3,850.00. The amount of unsecured claims filed total is \$33,557.95. The court notes Debtor incorrectly listed the unsecured amount claimed by the Franchise Tax Board ("FTB") as \$14,504.02, but the proof of claim filed by the FTB values the unsecured claim at \$14,869.80. POC 4-1, p. 3. The Plan proposes payments \$2,246.00 for sixty (60) months. Dckt. 16. Debtor is proposing a 0% dividend to unsecured claims. *Id.* Because the Plan pays nothing to unsecured claims, the Plan fails the liquidation analysis and cannot be confirmed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

28 thru 29

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on September 9, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Motion to Confirm Plan is xxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

1. Debtor failed to appear at the First Meeting of Creditors and the meeting was continued to October 6, 2022, and
2. The Plan is not feasible, nor does Debtor appear to be able to comply with the Plan.
 - a. Debtor's budget is unrealistic. Schedule J does not reflect any expenses for a vehicle or medical insurance;
 - b. Debtor failed to file tax returns;

- c. Debtor fails to provide for the full claims of the Internal Revenue Service (“IRS”) and Franchise Tax Board (“FTB”);
- d. Including the IRS and FTB’s claims would cause completion of the Plan to take approximately 85 months.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor is self-employed, earning a net monthly income of \$6,933.00, but Debtor’s Schedule J does not reflect medical insurance or vehicle expenses. Debtor has failed to explain the lack of expense for these items. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File tax returns

The IRS and FTB’s claims indicate tax returns were not filed for numerous years prior to filing for bankruptcy. Trustee’s declaration asserts that Trustee has only received Debtor’s 2013 tax return, to date. Declaration, Dckt. 15, filed on September 7, 2022. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide for a Secured Claim

Debtor’s Plan does not provide for the secured claim of FTB. Additionally, there is no indication Debtor plans to provide for FTB outside of the Plan. FTB may request relief from stay which could impact Debtor’s ability to finance the Plan.

Failure to Provide for a Priority Claim

Trustee asserts that the IRS filed a claim with a priority amount of \$81,063.29 in priority unsecured debt but Debtor only estimated and scheduled the IRS as priority for \$30,000.00, and \$25,544.00 as unsecured nonpriority. Proof of Claim 9-1, filed on August 29, 2022. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Plan Term is More than 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 85 months due to proofs of claims filed by the IRS and Franchise Tax Board. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

DECEMBER 13, 2022 HEARING

The Chapter 13 Trustee filed a Status Report on December 5, 2022. Dckt. 21. The Trustee reports that the Meeting of Creditors has been completed. However, at the December 1, 2022 Meeting of Creditors, the Debtor stated that he had not yet filed his tax returns, and the Meeting of Creditors has been continued to January 26, 2023.

At the hearing, counsel for the Debtor reported that Debtor attended the First Meeting of Creditors and is working on his tax returns (needing to get additional records from his bank). The First Meeting has been continued to January 2023.

The Trustee reported that the Debtor is current on Plan payments Trustee reported and concurs with there being a continuance of the hearing on this Objection.

FEBRUARY 13, 2023 HEARING

The Trustee's February 9, 2023 Docket Entry Report states that the First Meeting of Creditors has now been concluded.

However, on January 30, 2023, the Chapter 13 Trustee filed a Motion to Dismiss this Bankruptcy Case. Dckt. 26. The grounds stated in the Motion are:

- a. Debtor is delinquent \$9,538.38 in Plan payments (2 months).
- b. The Tax Returns have not yet been provided.
- c. The Internal Revenue Service proof of claim states that tax returns have not been filed by Debtor for the 2016 to 2022 tax years. The California Franchise Tax Board proof of claims states that State tax returns have not been filed for the same period. State tax obligations are not provided for in the Plan.

At the hearing, counsel for the Trustee believes that all issues have been resolved, except that the over extension. Counsel for Debtor reports that the 2016 through 2022 tax returns have been filed, and it is anticipated that the taxing agencies will be amending their claims.

The Parties agreed to a further continuance to allow the taxing agencies to see the returns and amend the claims.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on April 4, 2023. Dckt. 40. Trustee states the IRS and FTB still have not amended their proofs of claim, and thus, the Plan is still overextended.

DEBTOR'S STATUS REPORT

Debtor filed a Status Report on April 4, 2023. Dckt. 42. Debtor states they have communicated with the IRS and FTB and expect them to amend their proofs of claims prior to the hearing.

APRIL 11, 2023 HEARING

At the hearing, the Trustee and the Debtor's counsel agreed to a continuance in light of the amended returns having been filed and it being reported that the taxing agencies amended proofs of claim being in process.

DEBTOR'S REPLY

Debtor filed a Reply on May 9, 2023. Dckt. 67. Debtor states:

1. Debtor are proposing a 100% Plan with a Federal Judgment Interest Rate of 1/4%.
2. Debtor proposes to pay annual lump sum bonuses and all future tax refunds to complete the Plan.
3. Debtor agrees in utilizing the Car Insurance monies as a lump sum payment, without the use of any cash collateral.
4. Debtor intends to use \$9,342.61 from car insurance proceeds to the Plan.
5. Debtor has applied for an *ex parte* application for a replacement vehicle.
6. Debtor has used the bonus of \$13,518.30 for payment of the new vehicle.
7. Debtor has paid \$24,917.61 thru May 2023.

TRUSTEE'S STATUS REPORT

Trustee filed a status report on May 16, 2023. Dckt. 74. Trustee states the Reply is vague in the amount of bonus income being paid. Trustee notes, however, the Declaration states "all tax refunds."

The proposed Plan only states Debtor will pay \$25,000 a year lump sum from bonuses. It does not indicate where Debtor gets these bonuses. However, based on information provided to Trustee, Debtor received \$78,000 in bonus income and \$10,000 in tax refunds in the last year.

Trustee believes Debtor can complete their Plan in a much shorter time than the 60 months proposed. Debtor is delinquent \$3,217.38 in Plan payments.

MAY 23, 2023 HEARING

At the hearing, counsel for the Debtor reported that they were substantially current, with all tax returns having been filed.

Counsel for the Trustee reports that Debtor has been working to resolve all the matters and concurs with the request for a continuance.

“CORRECTED FIRST AMENDED CHAPTER 13 PLAN”

On June 6, 2023, Debtor filed a “Corrected First Amended Chapter 13 Plan.” Dckt. 81. Debtor proposes monthly plan payments of \$385.00 for three (3) months following monthly plan payments of \$660.00 for fifty-seven (57) months. *Id.* Debtor also proposes four (4) payments of \$25,000.00 from bonuses on or before April 1, 2024 each year, and a payment of \$16,000.00 from a bonus to purchase a replacement vehicle.

However, Debtor did not file a proof of service of the Motion pursuant to Local Bankruptcy Rule 9013-3. Debtor did not file any documentation that notice was given to all parties in interest pursuant to Local Bankruptcy Rule 2002.

Upon review of the court’s civil minutes, it is unclear if the “Corrected First Amended Chapter 13 Plan” resolves Trustee’s outstanding issues.

At the July 11, 2023 continued hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtors, Terrance Hall and Sacha Hall, (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is **XXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion to Incur Debt is XXXXX.
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Terrance Levell Hall and Sacha Cadell Hall ("Debtor") seeks permission to purchase a 2011 GMC Yukon, with a total purchase price of \$25,249.60 and monthly payments of \$616.64 to Auto Empire over 14 month with a 0.0% fixed interest rate.

TRUSTEE'S RESPONSE

Trustee filed a Response on May 30, 2023. Dckt. 79. Trustee states they do not oppose the Motion, but addresses the following:

1. Debtor's Declaration does not indicate which vehicle the 2011 GMC Yukon is replacing.
2. The Motion states the down payment comes from Debtor's bonus and tax refunds, which is contrary to the First Amended Plan which states Debtor's insurance proceeds will be used to purchase a replacement vehicle.

3. Debtor is delinquent in Plan payments, however, the confirmation hearing was continued to July 11, 2023 for Debtor's Attorney to prepare a corrected Plan.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Response. Dckt. 83. The court notes, the "Opposition" reads more as a reply to Trustee's Response. Debtor states:

1. Debtor has filed a corrected First Amended Plan which corrects the additional provisions to mirror the court's order for purchase of the replacement automobile.
2. Debtor's vehicle that was totaled was a 2007 GMC Yukon XL 1500.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor provides the following grounds for the purchase of the vehicle:

1. Debtor does not have a confirmed plan, however, the proposed Plan is a 100% Plan and Debtor is current on proposed Plan payments.
2. Debtor requests permission to incur debt for the purchase of a 2011 GMC Yukon XL for \$25,249.60.
3. Debtor has made a down payment of \$16,000.

Debtor's Declaration indicates the down payment came from debtor Terrance's bonus in the amount of \$13,518.30, the remainder from debtor's tax return. Declaration, Dckt. 72.

Upon review of the docket, by prior order of the court, the court stated Debtor can use insurance proceeds to purchase a replacement vehicle. Order on Motion to Value Collateral, Dckt. 63. The court did not authorize Debtor to use their income. However, Debtor has recently filed an Amended Plan which uses Debtor's bonus to purchase a replacement vehicle. The Plan does not authorize Debtor to use Debtor's tax refund.

4. Auto Empire has agreed to carry the balance of the purchase, in house at 0% interest, with payments of \$616.64 for 14 months.

5. The purchase does not adversely affect creditors because it does not alter Plan payments.

Debtor refers to Exhibit A, the contract. Debtor's attached exhibit is alleged to be a purchase contract, however, the contract is blank. Dckt. 71. The court cannot confirm what the purchase price of the vehicle is, the monthly contractual obligations, when payments commence, and what the interest rate will be.

Additionally, Debtor's Schedule I and J indicates only a net income of \$660. Debtor's Schedule J does not include monthly car expenses. Debtor's proposed Plan requires monthly payments of \$660. Amended Plan, Dckt. 81. Debtor's net income is \$660. Schedule J, Dckt. 38. There does not appear to be sufficient income to support an additional car payment.

Debtor requested a continuance so the hearing can be conducted in conjunction with the Motion to Confirm Modified Plan. The Trustee concurred with the request.

July 11, 2023 Hearing

At the hearing, **xxxxxx**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Terrance Hall and Sacha Hall ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxxxx**.

30 thru 31

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is granted.

The debtor, Richard Scott Turner ("Debtor") seeks confirmation of the Modified Plan because Debtor's income has reduced by almost \$30,000. Declaration, Dckt. 29. The Modified Plan provides \$1,110.28 per month for 36 months, followed by \$1,142.00 per month for 3 months, then a lump sum payment from the sale of debtor's residence on September 25, 2023. Modified Plan, Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 27, 2023. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan term states it will be a sixty (60) month plan, however, Debtor's additional provisions indicate it will only be a forty (40) month plan.

- B. Debtor is proposing a no less than 0% plan, however, the Trustee calculates unsecured claims will be paid approximately 46.49%. So long as Debtor does not oppose disbursement to unsecured claims, Trustee does not oppose this term.
- C. Debtor's declaration is not listed as a document that was served on interested parties.

DEBTOR'S REPLY

Debtor filed a reply on June 30, 2023 (Dckt. 50) stating:

1. The Plan term shall be forty (40) months.
2. Debtor does not oppose a distribution to unsecured claims and acknowledges they will receive more than a 0.00% dividend.

Debtor requests the above two issues be reflected in the order confirming the Plan.

While making a 49% dividend is not less than a 0.00% dividend, the purpose of having a not less than dividend amount stated is to provide the court and all parties in interest with a fair estimate of what the projected distribution will be. Saying "not less than 0.00% dividend is little more than saying, "surprise you may be something or you may not, whatever"

At the hearing, **XXXXXXX**

3. Debtor does not address whether Debtor's Declaration was served. It is not clear whether all parties were served evidence for this matter, as required by Local Bankruptcy Rule 9014-1(e). At the hearing, **XXXXXXXXXXXX**

~~_____ The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Richard Scott Turner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 6, 2023, as amended:~~

- ~~_____ 1. The plan term of the Modified Plan is forty (40) months.~~

~~2. Class 7 nonpriority unsecured claims will receive more than a 0.00% dividend.~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

31. [22-23199-E-13](#) MELISSA/FRANCISCO RUELAS **OBJECTION TO DEBTOR'S CLAIM OF**
[DPC-2](#) Gary Fraley **EXEMPTIONS**
5-24-23 [\[65\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 24, 2023. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is XXXXXXX.

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Melissa Ann Ruelas and Francisco Ruelas's ("Debtor") claimed exemptions under California law. Trustee's concerns stem from:

1. **Asset not previously disclosed:**
 - a. Debtor now exempts assets related to a personal injury claim. These were not disclosed in Debtor's initial filings. Trustee believes this asset was concealed prior to confirmation, which could have

affected the feasibility of the Plan or the extent creditors would need to be paid pursuant to the liquidation test.

2. Wrong Exemptions Used

- a. The asset Debtor is now exempting is listed as a personal injury claim. Debtor is exempting under California Code of Civil Procedure § 704.140(a). It appears, however, the asset is the settlement proceeds arising from the personal injury claim.

3. Reasonable and Necessary

- a. Exemptions under California Code of Civil Procedure § 704.140 are only exempted to the extent necessary for the support of Debtor, pursuant to *Sylvester v. Hafif (In re Sylvester)*, 220 B.R. 89, 91 (B.A.P. 9th Cir. 1998).

Debtor's Opposition

Debtor filed an opposition on June 27, 2023. Dckt. 69. Debtor states:

1. Asset not previously disclosed:

- a. On April 8, 2022, debtor Melissa was involved in a motor vehicle accident. Seventeen (17) days before filing the bankruptcy petition, debtor Declaration of debtor Melissa, Dckt. 70. Melissa hired a personal injury attorney. *Id.* Through inadvertence of Debtor's Counsel, Debtor's petition did not disclose or exempt the personal injury cause of action. Declaration of Counsel, Dckt. 71.

2. Wrong Exemptions Used

- a. Debtor claims they used the proper exemptions and that it is unclear from Trustee's opposition how the alleged exemption was improper. Additionally, because there was no award of settlement damages prior to the filing of bankruptcy, § 704.140(b) does not apply.

3. Reasonable and Necessary

- a. Debtor argues they will have ongoing costs associated with the injuries, therefore, it is reasonable and necessary for their support.

DISCUSSION

The court begins this exemption Objection review with California Code of Civil Procedure § 704.140 provides (emphasis added):

(a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, **a cause of action for personal injury** is exempt without making a claim.

(b) Except as provided in subdivisions (c) and (d), **an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support** of the judgment debtor and the spouse and dependents of the judgment debtor.

. . . .

Exemption rights are determined as of the date of the petition. When this case was filed, Debtor could claim an exemption in injury claim. 11 U.S.C. § 522(b). Here, Debtor has belatedly done so, human error the cause for the delay.

From the evidence provided to the court, it appears the cause of action arose prior to the bankruptcy case and the settlement occurred after the filing of the petition. Therefore, as of the date of the petition, Debtor had a right to exempt the claim pursuant to California Code of Civil Procedure § 704.140(a).

Now, as one knows, merely claiming an asset as exempt generally does not remove the asset from the bankruptcy estate. *Schwab v. Reilly*, 560 U.S. 770 (2010). Here, as noted above, the right to claim the exemption is one in which the debtor can continue to control the cause of action for personal injury, but is only entitled to that portion which is necessary for support.

Purported Settlement

In the Opposition, Debtor states that in March 2023, which is while this bankruptcy case was pending, Debtor and her attorney agreed to settle the undisclosed personal injury claim that is property of this bankruptcy estate. The settlement amount is stated to have been \$47,500.00. From this undisclosed property of the Bankruptcy Estate in this case, Debtor states that she received the net sum of \$30,170 after paying several modest liens and a 29% contingency attorney's fees (which have not been authorized by this court).

Debtor has not provided a copy of the settlement, however, as evidence that the settlement occurred after the petition date. Additionally, Debtor has not submitted to the court a Motion to Approve the Stipulation between Debtor and the settling party.

Determination of Exemption in Proceeds of Claim

Once the claim was settled and reduced to cash proceeds, the exempt property shifts to the cash proceeds themselves. This shifts to the necessary for support inquiry under § 704.140(b). *See In re Altmiller-Rubio*, No. 08-17274-B-13, 2011 Bankr. LEXIS 5570, at *12 (Bankr. E.D. Cal. Sep. 13, 2011). The Ninth Circuit Bankruptcy Appellate Panel has addressed the relationship between subsection (a) and (b), stating:

[W]e believe that the California Legislature did not intend CCP § 704.140(a) to exempt personal injury claims in their entirety, without reference to necessity for support. Rather, we believe that subsection (a) merely allows a debtor to exempt personal injury claims without having to make a formal claim. Subsections (a) and

(b) are not mutually exclusive; subsection (b) defines the scope of exemption identified in subsection (a). Therefore, the bankruptcy court did not err in reading the subsections together; both provisions govern the exemption in the personal injury claim. The bankruptcy court correctly required Debtors to demonstrate that the settlement proceeds from the malpractice action are necessary for their support.

Gose v. McGranahan (In re Gose), 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004)

The court finds that the use of § 704.140(a) and (b) is proper for this personal injury claim. California Code of Civil Procedure § 704.140(a) and (b) are not mutually exclusive, and the court must determine whether the proceeds are necessary for the support of Debtor. Debtor Melissa's declaration (Dckt. 69) indicates:

1. Debtor Melissa was diagnosed with a soft tissue injury;
2. Debtor Melissa's chiropractors have diagnosed her with nerve root injuries and muscle sprains;
3. Debtor Melissa has ongoing injuries in that she cannot perform everyday tasks;
4. Debtor has hired assistance for housekeeping;
5. Debtor Melissa seeks chiropractic services once to twice per month, and her insurance only covers nine (9) visits annually;
6. Debtor Melissa's chiropractor requires x-rays once per year; and
7. Debtor anticipates the need to hire a landscaper.

In her Declaration Debtor identifies the following expenses going forward flowing from this injury:

1. Chiropractic Co-Pay.....(\$40) per visit, Nine Treatments.....(\$360)
2. Chiropractic Cost in Excess of Insurance Covered..... (\$1,500) annual
3. Annual X-Rays.....(\$40) co-pay

This is an additional \$1,600.00 expense annually.

Debtor also seeks to hire a "landscaper" to do the yard work, stating that this will be \$100 a month. (Possibly a little low projection.) This would be an additional \$1,200 a year.

This totals \$2,800 a year. If this injury results in requiring these medical treatments permanently, the net proceeds (assuming the court approves the legal fees for special counsel) would fund approximately 15 years of these expenses.

What the court has not been presented with is the simple testimony of Debtor's doctor as to her medical condition, what injury remains from the accident (as opposed to any pre-existing condition).

Additionally, while Debtor seeks to claim the money proceeds as exempt, Debtor and Debtor's counsel have not moved forward to get the court to retroactively approve the settlement, nobody has sought retroactive approval of employment of counsel, and no one is seeking allowance of legal fees for such counsel if retroactively authorized to be employed.

In reviewing Debtor's bankruptcy counsel's Declaration, Dckt. 71, he explains that the Amended Schedules A/B and C were filed on April 24, 2023 - which is coincidentally just shortly after it was settled sometime "In March 2023" as stated in the Opposition. Opp., ¶ 5; Dckt. 69. No testimony is provided as to how the claim was prosecuted in a way that the Debtor and her bankruptcy attorney never discussed this asset. Debtor's bankruptcy counsel states that he is the one who referred her to the personal injury counsel, so it is clear that bankruptcy counsel knew Debtor was hiring another attorney to represent her and the estate's interests in this bankruptcy case.

In his Declaration, Debtor's counsel states that the clear error of this missing asset occurred because he insisted on rushing to get the Schedules completed so they could file the bankruptcy case on December 9, 2022, to stop the sale of Debtor's truck. Dec. ¶ 5; Dckt. 71. Thus, it appears that counsel's desire to file complete pleadings, even in an emergency and making staff work after hours rather than filing a "skeletal" petition and then follow up shortly thereafter with accurate Schedules and Statement of Financial Affairs is a recipe for this type of non-disclosure potential disaster.

At the hearing, **XXXXXXX**

Trustee's Objection to Exemptions are overruled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is **XXXXXXX** .

FINAL RULINGS

32. [20-20309](#)-E-13 MYKOLA VARHA MOTION TO CONTINUE CASE
MS-3 Mark Shmorgon ADMINISTRATION, SUBSTITUTE
5-25-23 [\[61\]](#) PARTY, AS TO DEBTOR
33. [18-27728](#)-E-13 SCOTT/MELINDA BROWN OBJECTION TO CLAIM OF SUTTER
DPC-4 Gary Fraley TAX COLLECTOR, CLAIM NUMBER 3
5-17-23 [\[142\]](#)

Pursuant to prior court order, dckt. 75, the Motion to Substitute was continued to July 25, 2023 at 2:00 p.m.

Final Ruling: No appearance at the July 11, 2023 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 17, 2023. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 3-1 of Sutter Tax Collector is sustained, and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, (“Objector”) requests that the court disallow the claim of Sutter Tax Collector (“Creditor”), Proof of Claim No. 3-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured and entitled to priority in the amount of \$705.89.

Objector asserts that the Claim includes no attachments proving a debt owed. Further, Objector asserts the Claim is asserting a debt owed to the wrong county’s tax collector. The only real property Debtor schedules is located in Olivehurst, California. Oliverhurst is located in Yuba County, not Sutter County. Additionally, Objector has tried to make payments on the claim but Creditor has refused to accept the payments.

The court notes that this Proof of Claim was not filed by the Sutter County Tax Collector, but by the Debtor.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

The Chapter 13 Trustee’s objection is well taken and supported by substantial evidence sufficient to overcome the prima facie validity of a proof of claim.

The Claim lacks supporting documentation, as required by Federal Rules of Bankruptcy Procedure 3001(c) and 3001(d).

Additionally, Debtor’s real property (listed on Schedule A/B as 1701 10th Avenue, Olivehurst, CA 95961 (Dckt. 53)) is located in Yuba County, not Sutter County. *See Find Address Geographies*, U.S. Census Bureau, <https://rb.gy/5s1oh> (last visited July 5, 2023) (search results for 1701 10th Avenue, Olivehurst, CA 95961 indicate that it is in “Yuba County”). It is not clear to the court why Sutter County is collecting property taxes for property located in a separate county.

Further, upon review of Creditor’s Proof of Claim, Creditor states the claim is both secured and entitled to priority treatment. Claim 3-1. The total claim is \$705.89. *Id.* The Proof of Claim indicates the claim is secured in the amount of \$705.89 and entitled to priority treatment in the amount of \$705.89. *Id.* Creditor cites § 507(a)(8) as their legal grounds for priority treatment. Claims under § 507(a)(8) are unsecured. 11 U.S.C. § 507(a)(8). Therefore, it is not clear whether Creditor’s claim is secured or unsecured.

The Chapter 13 Trustee states that the Trustee has attempted to pay the Claim and Creditor has refused the payments, and that the Trustee has made Debtor’s Attorney aware of this issue. Declaration,

Dckt. 144. Exhibit 2 provides evidence of the rejected payments. Dckt. 145. The docket does not show that any amended claim or Notice of Satisfaction have been filed. The Chapter 13 Trustee further states that under the Plan the Trustee will need to continue making payments, unless the plan is modified or the Claim is disallowed. Declaration, Dckt. 144.

No response has been filed to the Trustee's objection.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Sutter Tax Collector ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 3-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

34 thru 35

Final Ruling: No appearance at the July 11, 2023 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on June 15, 2023. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on June 27, 2023. Dckts. 40, 42. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

35. [23-21331](#)-E-13
[KMM-1](#)

RAKESH/ASHIKA REDDY
Mark Wolff

**OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION**
5-26-23 [24]

Final Ruling: No appearance at the July 11, 2023 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 26, 2023. By the court's calculation, 46 days' notice was provided. 14 days' notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on June 27, 2023. Dckts. 40, 42. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.